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In the Matter of

Digital Performance Right in Sound
Recordings and Ephemeral
Recordings

Docket No. 99-6 CARP DTRA

ORDER

Today the Library of Congress rules on two motions regarding participation in this proceeding. On January 7, 2000, Rob Glaser, CEO of RealNetworks, Inc., submitted a motion to accept a late-filed Notice of Intention to Participate. After the pleading cycle on this motion was completed, the Library determined that it lacked sufficient information to rule and directed Glaser to show cause as to why he should be allowed to participate in this proceeding. Order in Docket No. 99-6 CARP DTRA (March 21, 2000). Glaser complied with this requirement, although the Recording Industry Association of America ("RIAA") remains on record as objecting to his participation.

The second motion to accept a late-filed Notice of Intent to Participate comes from BroadcastAmerica.com, Inc. ("BroadcastAmerica"). There is no opposition.

Glaser Motion

As far as the Library can determine, this is the first time that an employee of a participant (RealNetworks has already been admitted to this proceeding) has sought separate entrance into a copyright license royalty adjustment proceeding. Given that Glaser is the CEO of RealNetworks, and undoubtably will be able to testify in this proceeding as a witness for RealNetworks, it is unclear why Glaser needs to participate separately. Unfortunately, Glaser's latest submission does not shed any light on this question.

In any event, to be eligible to participate in this proceeding, a party must have standing. Section 802(c) provides in pertinent part:

Any copyright owner who claims to be entitled to royalties under section . . . 112, 114 . . . , any transmitting organization entitled to a statutory license under section 114(d) . . . , may submit relevant information and proposals to the arbitration panels in proceedings applicable to such copyright owner or interested copyright party, and any other person participating in arbitration proceedings may submit such relevant information and proposals to the arbitration panel conducting the proceedings.

17 U.S.C. 802(c). The Library acknowledged in its March 21 show cause Order that this provision is "far from a model of clarity," but concluded that a specific interest in the royalty fees, as opposed to a general one, is required. Order in Docket No. 99-6 CARP DTRA at 3 (March 21, 2000). To have a "specific" interest in a royalty rate suggests that the participant must be a party directly affected by the royalty fee, e.g., as a copyright owner, a copyright user, or an entity or organization involved in the collection and distribution of royalties. As a copyright owner, one has a specific interest in a royalty rate because the rate determines how much the owner will receive in compulsory license fees from the use of his or her works. As a copyright user, one has a specific interest in a royalty rate because the rate determines how much that party must pay for the use of copyrighted works. Included in these categories are organizations and societies that represent the rights and interests of copyright owners and users. Such a requirement restricts participation to those who have a stake in the outcome of the proceeding. It is apparent from Glaser's submission that he does not have a specific interest in the section 112 and 114 royalty rates, but rather has a general interest only.

It is evident from Glaser's show cause submission, and his earlier submissions in support of his motion, that he is a leader in the field of audio streaming via the Internet. It is not clear, however, how Glaser will be directly affected by the section 112 and 114 rates. He submits that he co-owns the Seattle Mariners baseball club, which transmits its games over the Internet that include apparently some sound recordings, and that he is a co-owner of the Professional Bowlers Association, which is building its own website. In addition, there are general references to his "pre-existing businesses and organizations . . . which will be directly impacted by the statutory rate," Glaser Show Cause at 3, as well as his ownership of a patent for an audio streaming system and an Internet financing fund. Nowhere in any of Glaser's submissions, however, is there a statement that Glaser himself (as opposed to RealNetworks) will be paying (or receiving) section 112 and 114 license fees. Glaser's interest in what the fees will be is general in that it may affect the profitability of his other businesses, but it is not specific to his person or to his role as a representative of these other businesses (other than RealNetworks). Consequently, Glaser's motion must be denied.

In denying Glaser's motion, we are confident that his voice will still be heard in this proceeding. As CEO of RealNetworks, a party to this proceeding, Glaser will still have the opportunity to be called as a witness and present his views. Glaser has not stated that he has testimony or evidence to offer that cannot be submitted through RealNetworks, or any of the other webcasters in this proceeding, and we see no special circumstances that warrant his inclusion as a party separate from RealNetworks.

BroadcastAmerica Motion

As stated above, there are no oppositions to BroadcastAmerica's motion to accept a late-filed Notice of Intent to Participate. For the reasons stated in the November 30, 1999, December 22, 1999, and March 21, 2000, Orders in this proceeding concerning motions to accept late-filed Notices of Intent to Participate, BroadcastAmerica's motion is granted.

Wherefore, **IT IS ORDERED** that Glaser's motion to accept late-filed Notice of Intent to Participate **IS DENIED**, and BroadcastAmerica's motion to accept late-filed Notice of Intent to Participate **IS GRANTED**.

SO ORDERED.

Marybeth Peters
Register of Copyrights

BY: _____

William J. Roberts, Jr.
Senior Attorney

DATED: June 21, 2000